

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DAL:2OKL:POSTF-154109-01
CGMcLoughlin

date: January 14, 2002

to: Team 1412, Large and Mid-size Business Division,
Natural Resources
Attn: Patty Shepard

from: Associate Area Counsel (LM:NR:DAL:2), Oklahoma City P.O.D.
2000-OKC

subject: Request for Advisory Opinion

Taxpayer: [REDACTED]
Taxable year: [REDACTED]
EIN: [REDACTED]
Type of tax: Income

We are following up on our July 9, 2001 memorandum concerning: (a) whether a Form 872-P signed by [REDACTED] and [REDACTED] (" [REDACTED] ") is effective to bind the partners in a TEFRA partnership; and (b) whether a communication agreement is sufficient to permit disclosure of taxpayer information concerning certain TEFRA partnerships. There, we concluded that the Form 872-P was effective to extend the I.R.C. § 6229 assessment statutes for partners that were members of the [REDACTED] consolidated return group. We also concluded that the communication agreement was sufficient and permitted the discussion and transmittal of taxpayer information pertaining to partnerships in which [REDACTED] consolidated group members were partners. As you know, our July 9, 2001 memorandum was submitted to the National Office, Chief Counsel, for review pursuant to CCDM (35)3(19)4(4). Based on that review, we wish to clarify certain aspects of our earlier memorandum.

Initially, we point out that, as stated in the July 9, 2001 memorandum, [REDACTED], as the common parent for the consolidated group, had the authority to sign a Form 872-P extending the I.R.C. § 6229 statute of limitations for all members of the [REDACTED] consolidated return group. This authority covered not only the partners of [REDACTED] (" [REDACTED] ") named in the partnership's Schedules

K-1, but also any indirect [REDACTED] partner, like [REDACTED] ("[REDACTED]"). While there may be practical problems associated with linking indirect partners like [REDACTED], you may send any required notices to this type of indirect partner pursuant to I.R.C. § 6223(c)(3). Whether or not it is practical to link indirect partners like [REDACTED] is a matter within your discretion.

With respect to the communication agreement, several issues arise from the current language of the agreement. [REDACTED], as common parent for the consolidated [REDACTED] group does have the authority to enter into a communication agreement under I.R.C. § 6103(c) covering taxpayer information for members of the [REDACTED] consolidated group. This includes taxpayer information on a TEFRA partnership in which a consolidated group member is the tax matters partner ("TMP") or is simply a partner.

However, the current language of the communication agreement does not appear to comply strictly with the requirements of Treas. Reg. § 301.6103(c)-1T(b). Those regulations specify that the separate written authorization to disclose taxpayer information set forth: (a) taxpayer identity information; (b) the persons to whom the disclosures are to be made; (c) the taxable years covered; and (d) the type of tax. Here, the communication agreement only specifies "all classes of Federal Tax" and does not include a list of the covered entities with taxpayer identification numbers.

In addition, with regard to the disclosures to partnerships in which the [REDACTED] consolidated group members are partners, the current communication agreement does not appear to comply with the strict requirements of Treas. Reg. § 301.6103(c)-1T(c), which generally permits disclosures to a third party when a taxpayer makes a written (or unwritten) request that the third party provide information or assistance relating to the taxpayer's return or to a transaction between the taxpayer and the IRS. Treas. Reg. § 301.6103(c)-1T(c)(1), which relates to written requests for information or assistance, states that the written request must indicate the taxpayer's identity information. The current communication agreement does not contain identity information for the partnerships in which the [REDACTED] consolidated group members were partners.

To remedy these problems, we recommend that a new communication agreement be entered into with [REDACTED] that will comply strictly with Treas. Reg. § 301.6103(c)-1T(b). Instead of listing "all classes of Federal Tax", you should specify the types of tax covered by the audit, such as "income, excise, and employment tax." In addition, you should include as a referenced attachment a schedule of the consolidated group members with employer identification numbers and a list of the partnerships under examination as part of the consolidated return exam with employer identification numbers. If you are examining returns which are not part of the consolidated return group, such as FSC returns, it would be advisable to obtain a separate communication agreement from those taxpayers or to make those taxpayers parties to the communication agreement covering the [REDACTED] consolidated group.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. Please contact Glenn McLoughlin at (405) 297-4803 if you have any questions. We are closing our file.

MARK A. O'LEARY (Group 2)
Associate Area Counsel

By: /s/ C. GLENN MCLOUGHLIN
C. GLENN MCLOUGHLIN
Senior Attorney

cc: AAC (LM:NR:DAL:2)

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DAL:2OKL:TL-N-1519-01
CGMcLoughlin

date: JUL 9 2001

to: Team 1412, Large and Mid-size Business Division,
Natural Resources
Attn: Patty Shepard

from: Associate Area Counsel (LMSB:DAL:2), Oklahoma City P.O.D. 2000-OKC

subject: Request for Advisory Opinion

Taxpayer: [REDACTED]
Taxable year: [REDACTED]
EIN: [REDACTED]

This memorandum responds to your request for assistance, dated February 28, 2001, dealing with the validity of a statute extension, Form 872-P, executed on behalf of the subject TEFRA partnership. This memorandum should not be cited as precedent. You specifically asked for our views on whether the Form 872-P, signed by [REDACTED] ("[REDACTED]"), binds the partnership. You also asked for guidance on the use of a communication agreement, Form 4764, in dealing with partnership matters. As discussed below, the Form 872-P did effectively extend the assessment statute for members of the [REDACTED] ("[REDACTED]") consolidated return group. However, the Form 872-P failed to extend the assessment statute for [REDACTED], the partner that is not a [REDACTED] consolidated return group member. In addition, the Form 4764 format, signed by an authorized [REDACTED] officer, you are currently using is sufficient to cover partnership related matters.

Although we informally coordinated this matter with the National Office, the advisory is subject to the review procedures of CCDM (35)3(19)4(4). The CCDM procedures require us to transmit a copy of the memorandum to the National Office. The National Office has ten days from receipt of our memorandum to respond. The National Office may extend the review period if necessary. We will keep you informed of any delays.

Facts

a. TEFRA Statute

[REDACTED] (" [REDACTED] ") was a TEFRA partnership during the [REDACTED] taxable year. [REDACTED] had six partners: [REDACTED] (" [REDACTED] "); [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED] (" [REDACTED] "). [REDACTED] (" [REDACTED] "), a member of the [REDACTED] consolidated group, held a small limited partnership interest in [REDACTED]. Except for [REDACTED], all of the partners were members of the [REDACTED] consolidated return group.¹ [REDACTED] was the [REDACTED] tax matters partner. [REDACTED] filed its [REDACTED] Form 1065 in [REDACTED].

In [REDACTED], Exam sought statute extensions for the [REDACTED] taxable year. Exam obtained one Form 872-P that was signed by a [REDACTED] officer. Exam obtained another Form 872-P that was signed by a [REDACTED] officer. Both Forms 872-P purported to extend the [REDACTED] assessment statute to [REDACTED]. No [REDACTED] officer signed a Form 872-P for the partnership. The [REDACTED] officer and the [REDACTED] officer who executed the Forms 872-P were not [REDACTED] officers. There is no evidence that [REDACTED] authorized either the [REDACTED] officer or the [REDACTED] officer to sign the Forms 872-P. The [REDACTED] Forms 872, extending the I.R.C. § 6501 assessment statute, contain no language expressly applying the extension to partnership items.

b. Communication Agreement

Exam has a policy of obtaining Forms 4764, Communications Agreement, for coordinated industry examinations. In this case, Exam typically obtained a Form 4764 listing [REDACTED] and [REDACTED] in the case name portion of the form. We understand that [REDACTED] is also a member of the [REDACTED] consolidated group and, until the [REDACTED] split-off, was [REDACTED]'s immediate parent. Agents based in Oklahoma City traditionally performed the [REDACTED] portion of the [REDACTED] examination. The Forms 4764 obtained in the past have always been signed by an authorized [REDACTED] officer.

¹ In [REDACTED], [REDACTED] and its subsidiaries split-off from the [REDACTED] consolidated return group. Thereafter, [REDACTED] filed its own consolidated return for its consolidated group.

Analysis

a. TEFRA Statute

I.R.C. § 6229(a) provides the statute of limitations for assessment of income tax attributable to TEFRA partnership items and affected items. The statute of limitations shall not expire until 3 years after the filing of the partnership return or the due date for the return, whichever is later. I.R.C. § 6229(b)(1) permits the assessment statute to be extended by agreement for any tax attributable to a TEFRA partnership item or affected item. I.R.C. § 6229(b)(1)(A) permits the assessment statute to be extended for a particular partner by an agreement entered into by the government and the partner. I.R.C. § 6229(b)(1)(B) permits the assessment statute to be extended for all partners by an agreement entered into by the government and the tax matters partner for the partnership (or "any other person authorized by the partnership in writing to enter into such agreement"). Typically, the government obtains a Form 872-P from the tax matters partner and extends the statute of limitations for all partners under I.R.C. § 6229(b)(1)(B).

Treas. Reg. § 1.1502-77(a) generally provides that the consolidated parent is the sole agent for each subsidiary in all matters relating to the tax liability for the consolidated return year. While the regulation contains a few exceptions to the general rule, the regulation does not specifically limit the consolidated parent's otherwise expansive authority with respect to TEFRA partnerships. Since the parent is the sole agent for all members of the consolidated group, the parent has the authority under I.R.C. § 6229(b)(1)(A) to extend the I.R.C. § 6229(a) statute of limitations on behalf of any consolidated group member.

Here, we did not obtain a Form 872-P from [REDACTED]'s tax matters partner, [REDACTED]. Instead, we obtained a Form 872-P from [REDACTED], the tax matters partner's direct parent. No one who was an officer of [REDACTED] executed either the Form 872-P signed by [REDACTED] or the Form 872-P signed by [REDACTED]. Thus, we do not have a Form 872-P which effectively extends the assessment statute for all [REDACTED]'s partners.

We do, however, have an effective statute extension for [REDACTED] partners who are part of the [REDACTED] consolidated group. As the common parent for the consolidated return group, [REDACTED] has broad authority to act on behalf of its consolidated group members. Treas. Reg. § 1.1502-77(a). That authority includes the ability to execute assessment statute extensions. Id. Consequently, [REDACTED] had the ability to extend the 9612 TEFRA assessment

statute under I.R.C. § 6229(b)(1)(A) and the government may assess any TEFRA deficiencies covering the [REDACTED] consolidated group members. This would include all the [REDACTED] partners except [REDACTED].²

You will still have to follow the normal TEFRA procedures when examining [REDACTED]. You will link the [REDACTED] consolidated group members that are [REDACTED] partners. The normal TEFRA notices will also have to be given to these partners. You will not include [REDACTED] in the linkages and will not need to provide [REDACTED] with the normal TEFRA notices. We do recommend that any future [REDACTED] Forms 872-P still be sought both from the tax matters partner, [REDACTED], and from [REDACTED].

b. Communication Agreement

I.R.C. § 6103 broadly prohibits the government from disclosing return or return information unless specifically permitted by statute. I.R.C. § 6103(c) allows return or return information to be disclosed to such person or persons designated by the taxpayer. The Form 4764 is used extensively in coordinated industry examinations to permit the government to disclose taxpayer information to taxpayer employees or other representatives. In the case of a consolidated return, Treas. Reg. § 1.1502-77(a) provides the consolidated parent with the authority to execute a Form 4764 covering return or return information pertaining to a consolidated return. This includes the authority to permit disclosure of return or return information generated by a TEFRA partnership in which a group member is tax matters partner.


In your case, the Form 4764 is broad enough to cover return or return information relating to [REDACTED]. The form permits the disclosure of return and return information and the discussion of tax issues on all classes of federal tax for [REDACTED], including [REDACTED]. That would include [REDACTED], [REDACTED]'s tax matters partner. The form is signed by an authorized officer of the consolidated parent, [REDACTED]. The

² Arguably, [REDACTED]'s authority to extend the I.R.C. § 6229 assessment statute also applies to [REDACTED]'s distributive share of [REDACTED]'s [REDACTED] partnership adjustments. This creates some practical problems relating to TEFRA linkages and the means for bringing the [REDACTED] adjustments through to [REDACTED]. Given [REDACTED]'s minor interest in [REDACTED], it may not be practical to rely on this theory and to make examination adjustments attributable to [REDACTED]'s [REDACTED] partnership interest.

authority granted in the Form 4764 is comprehensive and would permit the government to discuss the full range of procedural and substantive issues arising from the [REDACTED] return.

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